

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 01-0356 ST
SALES AND USE TAX

For Tax Periods: 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

Issue

Sales and Use Tax: Imposition

Authority: IC 6-8.1-5-1 (b), IC 6-8.1-5-1 (b), IC 6-2.5-3-2 (a), 45 IAC 2.2-3-12 (c).

The taxpayer protests the imposition of use tax on two items.

Statement of Facts

The taxpayer is a storage tank painting contractor that does work for both industrial and governmental entities. After an audit, the Indiana Department of Revenue, hereinafter, referred to as the "department," assessed additional use tax, interest, and penalty. The taxpayer protested a portion of the assessment and a hearing was held on the imposition of the use tax.

Sales and Use Tax: Imposition

Discussion

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

Indiana imposes an excise tax on tangible personal property stored, used, or consumed in Indiana. IC 6-2.5-3-2 (a) The taxpayer protests the imposition of the use tax in two situations. The first situation concerns the imposition of use tax on tangible personal property in the provision of a service. During the audit period, the taxpayer purchased

both equipment and supplies that it used in sandblasting the storage tanks prior to painting the storage tanks. The department assessed use tax on the equipment and supplies. The taxpayer protests the assessment on the supplies of slag abrasive.

The taxpayer bases this protest on two premises. First, the taxpayer contends that the slag abrasive was used in a contract furnishing a service to an exempt organization, a governmental entity. The sales and use taxability of supplies used to perform a service contract for an exempt organization is stated at 45 IAC 2.2-3-12 (c) as follows:

Utilities, machinery, tools, forms, supplies, equipment, or any other items used or consumed by the contractor and which do not become a part of the improvement to real estate are not exempt regardless of the exempt status of the person for whom the contract is performed.

In this case, the taxpayer used the slag abrasive in sandblasting the storage tanks and preparing them for the application of paint. The slag abrasive is clearly a supply used by the taxpayer that did not become a part of the storage tank. Therefore, pursuant to the above-cited Regulation, the slag abrasive is not granted exempt status because it was used on storage tanks owned by an exempt governmental entity.

Alternatively, the taxpayer argues that the slag abrasive is not taxable because the governmental entity is required to dispose of the slag and the taxpayer cannot take it with him or reuse it. No exemption to imposition of the use tax exists for tangible personal property used in performing a service contract because the contractor cannot take the used material with him or reuse it.

The taxpayer also protests the assessment of use tax on the tangible personal property listed in the audit as reference #655835. The taxpayer contends that the department inadvertently assessed use tax on a quotation of a price for certain material that the taxpayer never actually purchased. The taxpayer offered adequate evidence that it never purchased or used the subject equipment. Therefore, use tax was improperly imposed on that reference number.

Finding

The taxpayer's first protest is denied and the second protest is sustained.